

Docket 8931. Complaint, May 25, 1973—Decision, Feb. 8, 1974

Complaint

Consent order requiring a nationwide retail chain headquartered in New York City, among other things to cease using deceptive tactics to sell its coupon book credit plan; selling property insurance in a deceptive manner; and selling credit life and credit accident and health insurance in such a way as to violate the Truth in Lending Act.

Appearances

For the Commission: *William R. Herman* and *David G. Grimes, Jr.*

For the respondent: *Martin Connor, Edward Wolfe* and *Peter J. Dias* of *White & Case*, New York, N.Y., *Charles A. Doyle*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that W. T. Grant Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1515 Broadway, New York, N.Y.

PAR. 2. Respondent owns, operates and controls a chain of approximately one-thousand one-hundred sixty-eight (1168) retail stores, located in approximately forty-three (43) states of the United States. Respondent is now and has for some time in the past been engaged in the advertising, offering for sale, sale and distribution of various articles of merchandise and services to the public at retail and in the regular extension of consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of its aforesaid business, respondent formulates, directs and controls the acts and practices of its retail stores. Respondent causes advertising mats, memoranda, policy

directives, consumer credit contracts and other documents and communications to be transmitted by the United States mails and by other interstate mechanisms to and from respondent's principal office and place of business and its retail stores located in other states. Respondent sells and distributes merchandise and credit devices in commerce by causing them to be shipped to and from its warehouses and from the places of business of its various suppliers to its warehouses and retail stores for distribution to and purchase by the general public, located in states other than those from which such shipments originate. By these and other acts and practices, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in merchandise and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course and conduct of its business, respondent offers to consumers applying for credit coupon books in denominations from \$20 to \$200, the coupons in which are exchangeable for merchandise or services at any of respondent's retail stores. Respondent sells these coupon books on an other than open end credit basis by means of a retail installment credit coupon book contract, hereinafter referred to as the coupon book contract. Consumers who sign a coupon book contract receive a coupon book and are obligated to pay to respondent, in equal monthly installments, the cash price of the coupon book, plus charges for property, credit life, and credit accident and health insurance, if selected, plus the finance charge computed on the sum of such cash price and insurance charges. The due date of the first payment is thirty days after coupons from the book are first exchanged for merchandise or services.

PAR. 5. In the course and conduct of its business, respondent has engaged in acts and practices, of which the following are typical and illustrative, but not all inclusive, for the purpose of inducing applicants for credit to sign coupon book contracts:

1. In advertisements which it has published or caused to be published, respondent has invited consumers to open credit accounts. Typical and illustrative, but not all inclusive, of such advertisements are the following published in various media:

a. In newspapers of general circulation:

Select one of these gifts when you open a new account for \$176 or MORE or add the same amount to your existing credit account

ENJOY BETTER LIVING WITH GRANTS CREDIT

b. In leaflets distributed through the mails:

WIN \$200 in merchandise Fill in this combination of application for credit and for free drawing * * *

AND AT THE SAME TIME * * * OPEN YOUR CREDIT ACCOUNT (or add on to your open or inactive Grants Credit Account) * * *

c. In leaflets distributed by respondent's employees to customers at respondent's retail stores:

Dear Customer: We'd love to have you become a part of our growing Grant credit family. Why not apply today.

ENJOY BETTER LIVING WITH GRANTS CREDIT—Bring or mail in the application in this pamphlet. No postage is necessary. Always prompt service. Most applications can be approved in a matter of minutes. Credit can be used to purchase anything in the store.

2. Respondent's employees have asked customers in respondent's retail stores, "Do you have an account with us?" or questions of similar import. These employees have offered to take applications for credit from customers who have given negative replies to such questions.

3. When consumers have come to the credit department in respondent's retail stores and requested a credit account, respondent's employees have presented a coupon book contract to those applicants who qualify for credit and have not made any statements about the type of credit being offered before asking such applicants to sign the document.

4. Respondent's employees have given affirmative replies to consumers who have asked whether the coupon book account is an open end credit plan. Typical and illustrative of those replies, but not all inclusive thereof, are those which are suggested in the following instructions issued by respondent:

a. Suppose the customer answers:

IS THIS A 30 DAY CHARGE ACCOUNT?

How would you reply?

THIS CAN BE USED JUST LIKE A 30 DAY CHARGE ACCOUNT.

b. Suppose the customer answered:

IS THIS LIKE MY SEARS CHARGE PLATE?

How would you reply?

YES, WE HAVE AN ACCOUNT LIKE THAT MRS. JONES, BUT WE'RE OFFERING YOU OUR MOST POPULAR PLAN.

5. Respondent's employees have represented to consumers who qualify for respondent's open end credit plan, and have requested such credit, that respondent requires new customers to open a coupon book account before they can obtain an open end credit account.

PAR. 6. By and through the statements, representations, acts and practices set forth in Paragraph Five above and various others of similar import not set forth herein, respondent and its employees have represented, directly and by implication, that:

1. Consumers who apply for credit from respondent will be offered open end credit accounts.

2. The document presented to qualified applicants for credit for their

signatures is an agreement for the extension of open end credit.

3. The coupon books are devices issued pursuant to an agreement for the extension of open end credit.

4. A consumer is required to have had a coupon book account before he can obtain open end credit from respondent.

PAR. 7. In fact:

1. Consumers who apply for credit from respondent are not offered open end credit accounts but are offered coupon book accounts.

2. The document presented to qualified applicants for credit for their signatures, the coupon book contract, is an agreement for the extension of credit other than open end.

3. Coupon books are not treated in the coupon book contract as devices issued pursuant to an agreement for the extension of open end credit, but are treated as goods and are sold by means of a retail installment contract.

4. Consumers who qualify for open end credit from respondent are not required to have had a coupon book account before they can obtain open end credit from respondent.

Therefore, the acts, practices and representations set forth in Paragraphs Five and Six above are false, misleading and deceptive.

PAR. 8. In a substantial number of instances, respondent has charged consumers for property insurance written in connection with credit sales. Typical and illustrative, but not all inclusive, of the circumstances in which such charges were incurred is the following:

1. Prior to presenting the retail installment contract to the consumer, respondent's employees have included the charge for property insurance in the amount financed.

2. Without authority from the consumer, respondent's employees have placed a check next to the statement in the contract, "I wish Property" and have placed the date in the designated position in the "Insurance Agreement" in the contract.

3. Respondent's employees have presented the contract to the consumer and indicated to the consumer the two places where he is to sign the contract without explaining to the consumer that one of the signatures is being requested in order to execute an "Insurance Agreement."

PAR. 9. Since, in the circumstances stated in the preceding paragraph, a substantial number of consumers have signed the "Insurance Agreement" on respondent's retail installment contracts in the mistaken belief that their signatures were required in order to obtain consumer credit and without knowing that they were signing an "Insurance Agreement," the acts and practices set forth in Paragraph Eight above are false, misleading and deceptive.

PAR. 10. In the course and conduct of its business, and at all times

mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of articles of merchandise and services of the same general kind and nature as those sold by respondent.

PAR. 11. Respondent's use of the aforesaid unfair and deceptive statements, representations and practices, and its failure to disclose material facts, as alleged above, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous belief that those statements and representations were true and complete, and into the purchase or retention of, and payment for, substantial quantities of coupon books and property insurance written in connection with credit sales.

PAR. 12. The acts and practices of respondent alleged above were and are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two above are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 13. Subsequent to July 1, 1969, in the ordinary course and conduct of its business, and in connection with its credit sales, as "credit sale" is defined in Regulation Z, respondent, through its employees, has caused consumers to execute retail installment contracts.

PAR. 14. In a substantial number of instances, respondent has charged consumers for credit life and credit accident and health insurance written in connection with credit sales. Typical and illustrative, but not all inclusive, of the circumstances in which these insurance charges were incurred is the following:

1. Prior to presenting the retail installment contract to the consumer, respondent's employees have included the cost of credit life and accident and health insurance in the amount financed, as "amount financed" is defined in Regulation Z.

2. Without authority from the consumer, respondent's employees have placed a check next to the statement in the contract, "I wish Credit Life and Accident & Sickness" and have placed the date in the designated position in the "Insurance Agreement" in the contract.

3. Respondent's employees have then presented the contract to the consumer and have indicated to the consumer the two places where he is to sign the contract without explaining to the consumer that one of the

signatures is being requested in order to execute an "Insurance Agreement."

PAR. 15. In the circumstances set forth in the preceding paragraph:

1. a substantial number of consumers have signed the "Insurance Agreement" on respondent's retail installment contracts in the mistaken belief that their signatures were required in order to obtain consumer credit and without knowing that they were signing an "Insurance Agreement;" and

2. a substantial number of consumers have signed the "Insurance Agreement" on respondent's retail installment contracts in the mistaken belief that credit insurance was required by respondent.

Those consumers' signatures on the "Insurance Agreement" do not constitute the specific dated and separately signed affirmative written indication of the desire to obtain credit life and credit accident and health insurance coverage which is required by Section 226.4(a) (5) (ii) of Regulation Z if the cost of such insurance is not included in the finance charge. Therefore, respondent has:

1. failed to compute and disclose accurately the "finance charge" as required by Sections 226.4 and 226.8 of Regulation Z.

2. failed to compute and disclose the "annual percentage rate" accurately to the nearest quarter of one percent as required by Sections 226.5 and 226.8 of Regulation Z.

PAR. 16. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failure to comply with Sections 226.4, 226.5 and 226.8 of Regulation Z constitute a violation of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the respondent named in the caption hereof has violated the provisions of the Truth in Lending Act and of the Federal Trade Commission Act; and

The Commission having duly determined upon motion submitted by complaint counsel and respondent that, in the circumstances presented, the public interest would be served by a withdrawal of the matter from adjudication for the purpose of negotiating a settlement by the entry of a consent order; and

The respondent and counsel for the Commission having executed an agreement containing a consent order, an admission by respondent of all jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as

alleged in the complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedures described in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent W. T. Grant Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1515 Broadway, New York, N. Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent W. T. Grant Company, a corporation, and respondent's agents, representatives, employees and successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of merchandise or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication, that:

a. The coupon book contract is an agreement for the extension of open end credit;

b. Coupon books are devices issued pursuant to an agreement for the extension of open end credit; or

c. A consumer is required to have had a coupon book account before he can obtain open end credit from respondent; provided that nothing herein contained shall prevent any representation to a consumer who then qualifies only for a coupon book account that he may thereafter qualify for open end credit.

2. Filling in any portion of or presenting a coupon book contract to any consumer for his signature unless, in connection with each such contract, respondent:

a. Prior thereto has presented to the consumer the following statement, printed in a clear and conspicuous manner on one side of a single sheet of paper (the reverse side of which sheet

of paper may contain the coupon book contract) without any other language:

[In 16-point bold-face type]

NOTICE: The Federal Trade Commission requires that we provide this information *before* we can offer you a coupon book contract:

[In 12-point bold-face type]

W. T. Grant Company offers two *different* credit plans to qualified customers—an OPEN END CHARGE ACCOUNT and a COUPON BOOK PLAN. The Coupon Book Plan is NOT an open end or revolving credit plan. Some of the differences are:

1. THE KIND OF CREDIT—A CHARGE ACCOUNT is open end or revolving credit. The COUPON BOOK PLAN is installment credit. Once you use the first coupon, you would pay for the entire book in the same way you would pay for a small installment loan.

2. YOUR PAYMENTS—Under the COUPON BOOK PLAN, after you use your *first* coupon, you pay each month part of the *full* price of the coupon book, which includes *all* finance charges, whether you have exchanged all the coupons for specific merchandise or not. When you have a CHARGE ACCOUNT, you pay *only* for the merchandise you have actually purchased, plus finance charges if you don't pay the entire balance each month.

3. COMPUTING FINANCE CHARGES—Finance charges on a CHARGE ACCOUNT are computed on specific merchandise purchased up to that point in time. But COUPON BOOK PLAN finance charges are computed on the *total price* of the coupon book and *not* just on the coupons already exchanged.

4. HOW TO AVOID FINANCE CHARGES—You can avoid finance charges when you have a CHARGE ACCOUNT by paying the entire balance each month. You can only avoid finance charges on the COUPON BOOK PLAN by paying for the *entire* book within 30 days after you use the first coupon *or* by paying for the coupons used within 30 days after exchanging the first one and returning *all* unused coupons to Grant's. You may return coupons at any time and receive full credit for the unused portion.

[as applicable] YOU MAY CHOOSE EITHER GRANT'S OPEN END CHARGE ACCOUNT OR ITS COUPON BOOK

PLAN [or] AT THIS TIME, YOU ARE ONLY ELIGIBLE FOR THE COUPON BOOK PLAN.

[In 16-point bold-faced type] I received and read the above statement *before* any coupon book contract was filled in or presented to me to sign.

Signed _____ Date _____

b. Prior thereto has obtained an acknowledgment, signed and dated by the consumer, of his having received and read the aforesaid statement; and

c. Provides the consumer with a copy which he may retain of the aforesaid statement, printed in the manner set forth in Sub-paragraph (a) of this paragraph, which copy shall be on the reverse side of the coupon book contract.

3. Adding on the existing coupon book obligation of any consumer who had not previously been eligible for open end credit from respondent unless respondent has:

a. Obtained and scored a credit application from said consumer within the previous twelve months, which requirement can be fulfilled by updating and rescoring a credit application previously submitted to respondent by the consumer, and

b. Complied with the requirements of Paragraph Two hereof.

4. Offering or presenting to any consumer optional or voluntary property insurance written in connection with any credit sale unless respondent has:

a. Read and presented to the consumer the following statement, printed in a clear and conspicuous manner in 12-point bold-faced type on one side of a single sheet of paper which does not contain the credit agreement:

Property insurance is entirely optional. You are not required to buy it to get credit.

b. Obtained from the consumer, on the same document as the aforesaid statement, an acknowledgment, signed and dated by the consumer, of his having received and had read to him the aforesaid statement.

5. Checking the box next to the statement "I wish Property" on the retail installment contract, or otherwise making any mark, designation, or indication on any document in connection with any similar statement respecting the selection of voluntary or optional property insurance; *Provided*, That nothing herein contained shall prevent respondent from setting forth the cost of such insurance, as permitted by Section 226.4(a)(6) of Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub.L. 90-321, 15 U.S.C. 1601, *et*

seq.); *Provided further*, That the cost of such insurance shall not be filled in as part of the "amount financed" on the disclosure statement required by Regulation Z in advance of the consumer's free and independent selection of such insurance.

6. Requesting any consumer to sign any document which purports to indicate the consumer's desire for optional or voluntary property insurance without orally disclosing to the consumer that his credit has already been approved, that property insurance is not required in connection with the extension of credit, that he need not buy such insurance, and that his signature is being requested in connection with an election of voluntary or optional property insurance.

7. Misrepresenting, orally or otherwise, directly or by implication, that voluntary or optional property insurance is required as a condition of obtaining credit from respondent.

8. Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of voluntary or optional property insurance.

II

It is further ordered, That respondent W. T. Grant Company, a corporation, and respondent's agents, representatives, employees, and successors and assigns, directly or through any corporate or other device, in connection with the extension of consumer credit, as "consumer credit" is defined in Regulation Z (12 C.F.R. § 226) of the Truth in Lending Act (Pub.L. 90-321, 15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

1. Failing to include and to itemize the amount of premiums for credit life and credit accident and health insurance as part of the finance charge, unless the amount of such premiums is excluded from the finance charge because of appropriate exercise of the option available pursuant to Section 226.4(a)(5) of Regulation Z.

2. Offering or presenting to any consumer optional or voluntary credit life and/or credit accident and health insurance in connection with any credit transaction unless respondent has:

a. Read and presented to the consumer the following statement, printed in a clear and conspicuous manner in 12-point bold-faced type on one side of a single sheet of paper which does not contain the credit agreement:

Credit life and/or credit accident and health insurance are entirely optional. You are not required to buy them to get credit.

b. Obtained from the consumer, on the same document as the aforesaid statement, an acknowledgment, signed and dated

by the consumer, of his having received and had read to him the aforesaid statement.

3. Checking the box next to the statement "I wish Credit Life and Accident and Sickness" in the retail installment contract, or otherwise making any mark, designation or indication on any document in connection with any similar statement respecting the selection of voluntary or optional credit life insurance and/or credit accident and health insurance; *Provided*, That nothing herein contained shall prevent respondent from disclosing the cost of such insurance, as permitted by Section 226.4(a)(5)(ii) of Regulation Z; *Provided further*, That the cost of such insurance shall not be filled in as part of the "amount financed" on the disclosure statement required by Regulation Z before the consumer has given affirmative written indication that he desires such insurance coverage.

4. Requesting any consumer to sign any document which purports to indicate the consumer's desire for optional or voluntary credit life and/or credit accident and health insurance without orally disclosing to the consumer that his credit has already been approved, that credit life and/or credit accident and health insurance are not required in connection with the extension of credit, that he need not buy such insurance and that his signature is being requested in connection with an election of optional credit life and/or credit accident and health insurance.

5. Misrepresenting, orally or otherwise, directly or by implication, that credit life and/or accident and health insurance are required as a condition of obtaining credit from respondent.

6. Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of optional or voluntary credit life and/or credit accident or health insurance.

7. Failing to compute and disclose accurately the finance charge, as required by Sections 226.4 and 226.8 of Regulation Z.

8. Failing to compute and disclose accurately the annual percentage rate to the nearest quarter of one percent, as required by Sections 226.5 and 226.8 of Regulation Z.

9. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8 and 226.10 of Regulation Z.

It is further ordered, That respondent shall retain a detailed description of the procedures used by it in the preceding three (3) years to determine whether a consumer has qualified for a coupon book account only or has also qualified for open end credit from respondent.

It is further ordered, That respondent shall, one (1) year after the

date upon which this order becomes final and one (1) year thereafter, file with the Commission a report, in writing, which shall include the following information, with respect to those states in which respondent offers coupon books:

1. The number of coupon book contracts and open end credit agreements signed in the previous year;
2. The number of consumers who have qualified for open end credit from respondent but chose to sign a coupon book contract during the previous year;
3. The number of consumers who qualified during the prior year for a coupon book account only and did not sign a coupon book contract;
4. The number of consumers during the previous year who, having previously been ineligible for open end credit from respondent, became eligible for and chose such credit.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the making of respondent's policy concerning consumer credit, in the preparation or placement of advertisement offering to extend consumer credit, in the consummation of any extension of consumer credit, or in the offering of property, credit life or credit accident and health insurance in connection with any consumer credit transaction, and that respondent secure a signed statement from each such person acknowledging that he has received and read this order.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent shall retain for two (2) years following its execution the original of any statement or disclosure the receipt of which must be acknowledged by any consumer pursuant to this order.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth, in detail, the manner and form in which it has complied with the order to cease and desist contained herein.

IN THE MATTER OF
PEERLESS MATTRESS & FURNITURE COMPANY, ET AL.